

# News from Ed Markey

United States Congress

Massachusetts Seventh District

FOR IMMEDIATE RELEASE

May 7, 2002

CONTACT: Israel Klein or Mark Bayer  
(202) 225-2836

## MARKEY CALLS ON REGULATORS AND INDUSTRY TO TIGHTEN CONFLICT-OF-INTEREST RULES

### Objective Research Reports Should Not Be Influenced By Wall Street Investment Banking Interests

WASHINGTON, D.C. --

Representative Ed Markey (D-MA), a senior member of the Energy and Commerce Committee, and former Chairman of the Telecommunications and Finance Sub-Committee, today called on the Securities and Exchange Commission, National Association of Securities Dealers, and the New York Stock Exchange to tighten proposed rules on research analyst conflicts-of-interest and asked the SEC to report on the number and status of current enforcement actions into securities analyst conflicts-of-interest. The SEC, NASD, and NYSE are meeting tomorrow to discuss a regulation developed by NASD and NYSE to address the problem of investment banking priorities tainting supposedly objective research reports.

"While I strongly support the ongoing rulemaking efforts, I have concerns that several of the proposed provisions under consideration tomorrow by the SEC, NASD and NYSE may not be sufficient to resolve some deeply rooted conflicts-of-interest in the full-service broker-dealer industry. Accordingly, I have submitted comments to the SEC, NASD and NYSE that outline areas where the proposed rules should be strengthened to provide greater investor protections," Rep. Markey said.

"The so-called 'Chinese Wall' that separates research analysts and investment bankers cannot be a revolving door through which analysts and bankers pass to coordinate efforts to serve their own firms' financial interests. Objective research reports and analysts' recommendations must be based on investment fundamentals, not on investment banking fees or relationships," Rep. Markey added.

Rep. Markey's comments to the SEC, NASD and NYSE relate to three of the areas under consideration: communications between broker-dealers' research and investment banking departments; review of research reports by the subject company prior to the release to the general public; and linkage between analyst compensation and investment banking business.

Communications between research and investment banking departments: When analysts and investment bankers want to discuss a research report before it is published, the proposed rule requires them to communicate through a compliance officer or "gatekeeper." Rep. Markey suggested prohibiting investment banking departments from reviewing research reports prior to publication.

Review of research reports by a subject company: The proposed rule creates an elaborate system that research analysts must follow if they want to submit a draft research report to the company that is the subject of the report. Rep. Markey suggested prohibiting analysts from submitting research reports to the subject of the reports before the report has been made public.

Linkage between analyst compensation and investment banking business: The rule currently prohibits analyst compensation that is linked to "a specific investment banking services transaction." (emphasis added). Rep. Markey believes that the term "specific" weakens the provision and could still create financial incentives to tailor analysis to suit investment bankers or company management if, for example, analyst salaries were tied to the overall profitability of their firm's investment banking departments, rather than to a "specific" banking transaction. Rep. Markey suggested that the regulators remove one word – "specific." This way, no member of the SROs could pay any bonus, salary or other form of compensation to a research analyst that is based upon ANY investment banking services.

In addition, Rep. Markey asked the SEC to respond to a series of questions regarding SEC, NYSE and NASD enforcement actions involving securities analysts.

"I have asked the SEC, NASD and NYSE to include my comments in the public record and consider incorporating them into the final version of the rule. In addition to submitting my comments about the pending rule on research analyst conflicts, I also have asked the SEC about its past enforcement actions in this critical area," Rep. Markey said.

"I hope that my comments on the proposed rule and questions about prior SEC and SRO enforcement actions will shed light on the important area of conflicts-of-interest within the broker-dealer industry. I firmly believe that Congress and the investing public need to know the facts about such conflicts so that we can prevent recurrences, which hurt investors and undermine confidence in the securities markets," Rep. Markey concluded.

###